UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADBUL H. ABDULLAH,

                Plaintiff,

-against-

28TH PRECINCT; P.O. ASSELTA; SGT. PURCELL; SGT. CZAPLINSKI,

                Defendants.

24-CV-0124 (JGK)

ORDER OF SERVICE

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JOHN G. KOELTL, United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under 42 U.S.C. § 1983, alleging that Defendants falsely imprisoned him. By order dated February 21, 2024, Chief Judge Laura Taylor Swain granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. For the reasons set forth below, the Court dismisses Defendant 28th Precinct, substitutes the City of New York for Defendant 28th Precinct, and directs service on Defendants City of New York, Officer Brianna L. Asselta, Sergeant Timothy Purcell, and Sergeant Robert Czaplinski.

## STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the

"strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

## DISCUSSION

### A.     28th Precinct

Plaintiff's claims against the New York City Police Department's ("NYPD") 28th Precinct must be dismissed because an agency of the City of New York is not an entity that can be sued. N.Y. City Charter ch. 17, § 396 ("[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law."); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007); *see also Emerson v. City of New York*, 740 F. Supp. 2d 385, 396 (S.D.N.Y. 2010) ("[A] plaintiff is generally prohibited from suing a municipal agency."). The Court therefore dismisses Plaintiff's claims against the 28th Precinct, a subdivision of the NYPD, because a precinct is not an entity that has the capacity to be sued. *See* N.Y. City Charter ch. 17, § 39; *Orraca v. City of New York*, 897 F. Supp. 148, 152 (S.D.N.Y. Sept. 8, 1995) ("[T]he 25th Precinct is a subdivision of the Police Department without the capacity to be sued.").

### B.     City of New York

In light of Plaintiff's *pro se* status and clear intention to assert claims against the City of New York, the Court construes the complaint as asserting claims against the City of New York, and directs the Clerk of Court to amend the caption of this action to replace 28th Precinct with the City of New York. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses the City of New York may wish to assert.

C.      **Order of Service**

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the

Court and the U.S. Marshals Service to effect service.[1] *Walker v. Schult*, 717 F.3d. 119, 123 n.6

(2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all

process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to

serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service on Defendants City of New York, Officer Brianna L.

Asselta, Sergeant Timothy Purcell, and Sergeant Robert Czaplinski through the U.S. Marshals

Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and

Return form ("USM-285 form") for each defendant. The Clerk of Court is further instructed to

issue summonses and deliver to the Marshals Service all the paperwork necessary for the

Marshals Service to effect service upon Defendants.

If the complaint is not served within 90 days after the date summonses are issued,

Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63

(2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for

service).

Plaintiff must notify the Court in writing if his address changes, and the Court may

dismiss the action if Plaintiff fails to do so.

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[1] Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

## CONCLUSION

The Court dismisses Plaintiff's claims against 28th Precinct because it does have the capacity to be sued. The Clerk of Court is directed to add the City of New York as a Defendant under Fed. R. Civ. P. 21.

The Clerk of Court is further instructed to issue summonses for the City of New York, Officer Brianna L. Asselta, Sergeant Timothy Purcell, and Sergeant Robert Czaplinski, complete the USM-285 forms with the addresses for these defendants, and deliver all documents necessary to effect service to the U.S. Marshals Service. The Clerk of Court also is directed to mail Plaintiff an information package.

Plaintiff may receive court documents by email by completing the attached form, Consent to Electronic Service.[2]

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated:   March 1, 2024
         New York, New York

                                        /s/ John G. Koeltl
                              _____
                                       John G. Koeltl
                                 United States District Judge

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[2] If Plaintiff consents to receive documents by email, Plaintiff will no longer receive court documents by regular mail.

## DEFENDANTS AND SERVICE ADDRESSES

1. City of New York
   New York City Law Department
   100 Church Street
   New York, NY 10007

2. Officer Brianna L. Asselta, #959462
   NYPD 28th Precinct
   2271-89 Frederick Douglass Blvd.
   New York, NY 10027

3. Sergeant Timothy Purcell, #934080
   NYPD 28th Precinct
   2271-89 Frederick Douglass Blvd.
   New York, NY 10027

4. Sergeant Robert Czaplinski, #945639
   NYPD 28th Precinct
   2271-89 Frederick Douglass Blvd.
   New York, NY 10027

## CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1.  I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;

2.  I have established a PACER account;

3.  I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;

4.  I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;

5.  I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and

6.  I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

**Civil case(s) filed in the Southern District of New York:**

Please list all your pending and terminated cases to which you would like this consent to apply. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

_____

_____

_____
Name (Last, First, MI)

_____
Address                    City                    State                    Zip Code

_____
Telephone Number                    E-mail Address

_____
Date                    Signature

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